Office-Supreme Court, U.S.
FILED
MAY 12 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1576

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

PRINCETON UNIVERSITY & STATE OF NEW JERSEY,
Appellants,

v.

CHRIS SCHMID,
Appellee.

On Appeal from the Supreme Court of New Jersey

RESPONSE OF APPELLANT, STATE OF NEW JERSEY, OPPOSING THE MOTION TO DISMISS OR AFFIRM

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The State of New Jersey submits the following response to the appellee's motion to dismiss or affirm.

The State of New Jersey joins Princeton's Jurisdictional Statement because it believes the Constitutional question presented is substantial.

This appeal raises Constitutional questions which directly implicate the legal status of Princeton University as a private educational institution. The decision of the Court below relates to the ability of Princeton to limit access of the public to its premises. That limitation

affects interests of Princeton, not the State of New Jersey. The real interests are those of Princeton and others similarly situated, and those of appellee and others similarly situated.

Appellee's suggestion that the position of the State on the Constitutional issues involved differs from that of Princeton is mistaken. It has not in its own right taken a position on the Constitutional question here presented other than to affirm its conviction that the question was substantial for the reasons stated in Princeton's Jurisdictional Statement and should be resolved by this Court. The State, because of its responsibilities under its trespass laws, does have an interest in having this issue decided authoritatively. Only the United States Supreme Court can do that in view of the federal question Princeton raises. Hence the State joined Princeton in this appeal.

The Supreme Court of New Jersey recognized the dominant interest of Princeton in the Constitutional questions presented and invited Princeton to intervene directly as a party. Princeton did so. When the decision below was handed down, Princeton petitioned the Court for a rehearing. The State did not join in that petition because it believed Princeton was capable of defending its own Constitutional rights—the question presented. The State did, however, clarify its position to the New Jersey Supreme Court as to Princeton's being the "real party in interest" and expressed its independent view that the "questions raised by the petition for rehearing are substantial and that this Court should grant the petition limited to the issues presented therein." Letter of the Attorney General of the State of New Jersey to the Justices of the New Jersey Supreme Court, dated December 8, 1980. The Court below dismissed the petition as moot. Princeton's Brief at 70a.

Appellee argues that the State is not "genuinely" appealing because, unlike Princeton, it has not claimed the

decision below is wrong. That misunderstands the State's interest. The New Jersey trespass statute made it an offense for appellee to intrude on Princeton's campus as he did. The decision below holds he has a State created Constitutional right to do so. Princeton urges this Court to hold the State Constitutional provision, as interpreted, invalid as in conflict with the Fourteenth Amendment. The State's interest in the case is not in whether, ultimately, this Court's resolution favors one of the private parties or the other. Its interest is simply that the issue be resolved by this Court so that it knows in what circumstances its trespass law can be Constitutionally enforced.

Accordingly no claim that the decision below was or was not in conflict with the Fourteenth Amendment is necessary or relevant to the State's appeal. The State joins Princeton's Jurisdictional Statement not because it agrees or disagrees with all the positions taken, but because it does affirm that, for the reasons set forth in the Statement, the question presented is substantial.

Respectfully submitted,

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